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PTO/SB/64 (10-05)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

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## PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

Docket Number (Optional)  
2537 PRO (203-2755)

First named inventor: Finch et al.

Application No.: 09/739,428

Art Unit: 3739

Filed: December 18, 2000

Examiner: Aaron Roane

Title: APPARATUS FOR THERMAL TREATMENT OF AN  
INTERVERTEBRAL DISC

07/13/2006 CNGUYEN1 00000011 210550 09739428

01 FC:1501 1400.00 DA  
02 FC:1504 300.00 DA

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions  
Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

### APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

#### 1. Petition fee

Small entity-fee \$ \_\_\_\_\_ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

Other than small entity – fee \$ 1,500.00 (37 CFR 1.17(m))

#### 2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in  
the form of \_\_\_\_\_ (identify type of reply):

has been filed previously on \_\_\_\_\_.  
 is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ 1,700.00.  
 has been paid previously on \_\_\_\_\_.  
 is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

07/12/2006 SSESHE1 00000024 210550  
01 FC:1453 1500.00 DA

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## 3. Terminal disclaimer with disclaimer fee

 Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required. A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

## 4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

July 10, 2006

Date

41,189

Registration Number, if applicable

631-501-5708

Telephone Number

Carter, DeLuca, Farrell &amp; Schmidt, LLP

Address

445 Broad Hollow Road, Suite 225  
Melville, New York 11747

Address

Enclosures:  Fee Payment Reply Terminal Disclaimer Form Additional sheets containing statements establishing unintentional delay Other: \_\_\_\_\_**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

 Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450. Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (571) 273-8300.

July 10, 2006

Date

Signature

Edward C. Meagher

Typed or printed name of person signing certificate

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Effective on 12/08/2004.

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

# FEE TRANSMITTAL For FY 2005

 Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 3,200.00)

## Complete if Known

Application Number	09/739,428
Filing Date	December 18, 2000
First Named Inventor	Finch et al.
Examiner Name	Aaron Roane
Art Unit	3739
Attorney Docket No.	2537 PRO (203-2755)

## METHOD OF PAYMENT (check all that apply)

Check  Credit Card  Money Order  None  Other (please identify): \_\_\_\_\_

Deposit Account Deposit Account Number: 21-0550 Deposit Account Name: United States Surgical Corp.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

- Charge fee(s) indicated below  Charge fee(s) indicated below, except for the filing fee  
 Charge any additional fee(s) or underpayments of fee(s)  Credit any overpayments  
 under 37 CFR 1.16 and 1.17

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

## FEE CALCULATION

## 1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Small Entity	Fee (\$)	Small Entity	Fee (\$)	Small Entity	Fee (\$)	
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

## 2. EXCESS CLAIM FEES

Fee Description	Small Entity
Each claim over 20 or, for Reissues, each claim over 20 and more than in the original patent	50 25
Each independent claim over 3 or, for Reissues, each independent claim more than in the original patent	200 100
Multiple dependent claims	360 180

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Multiple Dependent Claims	Fee (\$)	Fee Paid (\$)
- 20 or HP =	x	=				
HP = highest number of total claims paid for, if greater than 20						

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
- 3 or HP =	x	=	
HP = highest number of independent claims paid for, if greater than 3			

## 3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 =	/ 50 =	(round up to a whole number) x	=	

4. OTHER FEE(S)	Fees Paid (\$)
Petition Fee under 37CFR1.17(m) \$1,500.00	1,500.00
Issue Fee and publication Fee \$1,700.00	1,700.00

## SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 41,189	Telephone 631-501-5708
Name (Print/Type)	Edward C. Meagher	Date July 10, 2006	

## CERTIFICATION UNDER 37 C.F.R. §1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service on date below as first class mail, postpaid in an envelope, addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: July 10, 2006

Edward C. Meagher

Appl. No. 09/739,428  
Petition dated July 7, 2006



Atty. Docket: 2537 PRO (203-2755)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**APPLICANTS:** Finch et al.      **EXAMINER:** Aaron Roane

**SERIAL NO.:** 09/739,428      **GROUP UNIT:** 3739

**FILED:** December 18, 2000      **DATED:** July 10, 2006

**FOR:** **APPARATUS FOR THERMAL TREATMENT  
OF AN INTERVERTEBRAL DISC**

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION UNDER 37 C.F.R. § 1.137 (b)**

Sir:

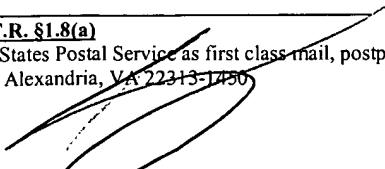
Applicants herewith submit a Petition for Revival of an Application Abandoned Unintentionally under 37 C.F.R. § 1.137 (b) and the fee required under 37 C.F.R. § 1.17 (m). The entire delay between the filing of this paper and the due date of the issue fee in the above-identified application was unintentional and without any deceptive intent on the part of the Applicants. Therefore, the Applicants respectfully request prompt and favorable action on its attached petition for reviving the above-identified application.

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**CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postpaid in an envelope, addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on July 10, 2006.

Dated: July 10, 2006

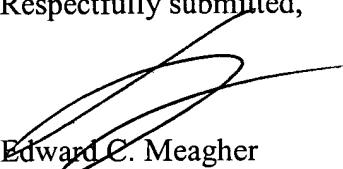
  
Edward C. Meagher

Appl. No. 09/739,428  
Petition dated July 7, 2006

Additionally, Applicants' Attorney noted and Examiner Roane confirmed that the box for corrected drawings was incorrectly checked on the Supplemental Notice of Allowability. Examiner Roane acknowledged in a telephone conference that all of the drawings on file have been accepted and are in appropriate form. Correction of this matter is greatly appreciated.

If the Examiner should have any questions concerning this communication, he is requested to call the Applicants' undersigned attorney at his convenience.

Respectfully submitted,



Edward C. Meagher  
Reg. No. 41,189  
Attorney for Applicants

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